

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

TIM TOTH  
ADC #551286

PLAINTIFF

V.

5:18CV00168 KGB/JTR

SUSAN POTTS,  
Administration Department,  
Drew County Jail, *et al.*

DEFENDANTS

**RECOMMENDED DISPOSITION**

The following Recommended Disposition (ARecommendation@) has been sent to United States District Judge Kristine G. Baker. You may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objection; and (2) be received by the Clerk of this Court within fourteen (14) days of the date of this Recommendation. If you do not file objections, Judge Baker can adopt this Recommendation without independently reviewing all of the evidence in the record. By not objecting, you may waive the right to appeal questions of fact.

**I. Discussion**

Plaintiff Tim Toth (“Toth”) has filed this *pro se* § 1983 action alleging that Defendants violated his constitutional rights while he was confined in the Drew

County Jail. *Doc. 1.*

On July 2, 2018, the Court entered an Order directing Toth to either pay the filing fee in full, or file an application to proceed *in forma pauperis*, on or before August 2, 2018. *Doc. 2.* He was cautioned that failure to comply with the Court's Order within that time would result in the recommended dismissal of his case, without prejudice, pursuant to Local Rule 5.5(c)(2).

On July 9 and 12, 2018, mail sent to Toth at his address of record was returned as undeliverable. *Docs. 3 & 4.* On July 17, 2018, after determining that Toth had been moved to the Arkansas Department of Correction ("ADC"), the Court entered a second Order directing him to, on or before August 2, 2018, either pay the filing fee or file an application to proceed *in forma pauperis*. The Court also: (1) reminded Toth of his obligation, under Local Rule 5.5(c)(2), to maintain a valid mailing address with the Clerk of this Court; and (2) again advised him that, if he did not respond, his case would be subject to dismissal. *Doc. 5-1.* The Order was mailed to Toth at his ADC address and was not returned. *7/19/18 Dkt. Entry.*

As of the date of this Recommendation, Toth has not complied with the Court's July 2 and July 17, 2018 Orders. The time to do so has expired.

## **II. Conclusion**

IT IS THEREFORE RECOMMENDED THAT:

1. This case be DISMISSED, WITHOUT PREJUDICE, due to a lack of prosecution;

2. The Court CERTIFY, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting this Recommendation would not be taken in good faith.

DATED this 11<sup>th</sup> day of September, 2018.

A handwritten signature in black ink, appearing to read "J. Thomas Ray", is written above a horizontal line.

UNITED STATES MAGISTRATE JUDGE